

# DECISION AND ORDER

**Decision Issue Date: August 8, 2018**

PROCEEDING COMMENCED UNDER Section 45(12), subsection 45(1), and Section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): ALFRED AVANESSY-MONACHAKANIAN

Applicant: QBS ARCHITECTS INC

Property Address/Description: 36 TEDDINGTON PARK AVE

Committee of Adjustment Case File Number: 17 275881 NNY 25 MV (A1111/17NY)

TLAB Case File Number: **18 131084 S45 25 TLAB**

**Motion Hearing date:** Wednesday, July 18, 2018

**DECISION DELIVERED BY S. Makuch**

## REGISTERED PARTIES AND PARTICIPANTS

Name	Role	Representative
Gregory Stapells	Owner	
Qbs Architects Inc	Applicant	
Alfred Avanesy-Monachakanian	Appellant	
City Of Toronto	Party	Sara Amini
Chen Stapells	Party	Meaghan Mcdermid
Carolyn Gossage	Participant	
Mary Carter	Participant	James Carter
Mary Williams	Participant	

## **INTRODUCTION**

This is an appeal from a decision of the Committee of Adjustment approving minor variances to permit the construction of a second story addition over a portion of the existing two-story dwelling in conjunction with a two story addition to the front of the dwelling.

## **BACKGROUND**

The following variances are being sought:

(1) A variance to Bylaw 438-86 and Bylaw 569-2013 related to size and to permit an increase in the current size of the building from .5 times the area of the lot to .628 times the lot area. Both those bylaws limit the size of the dwelling to .35 times the area of the lot. The proposed size of .628 was a reduction, recommended by City planning staff, from a coverage of .64 which was originally sought.

(2) A variance to permit a westerly side yard setback of .9 m at grade and a second floor setback of 1.40. The dwelling is currently setback .9 m at grade.

## **MATTERS IN ISSUE**

The matters in issue may be categorized under two general headings which were eloquently and clearly put forth by the immediate neighbour to the west, the appellant, and by other residents, participants, who also have lived in the area for many years. They know their neighbourhood well, and are concerned about its character.

One category is the appearance of the building as it is proposed and the other is the impact on the immediate neighbours. With respect to appearance, clearly there is a concern that the proposed dwelling is out of keeping with the character of Teddington Park Ave., because the proposed dwelling is believed to be modern, too large, too high and boxy in shape. The second area of concern is that of impact; in particular shadow, closeness, overlook and privacy.

## **JURISDICTION**

A decision of the Toronto Local Appeal Body ('TLAB') must be consistent with the 2014 Provincial Policy Statement ('PPS') and conform to the Growth Plan of the Greater Golden Horseshoe for the subject area ('Growth Plan').

In considering the applications for variances from the Zoning By-laws, the TLAB Panel must be satisfied that the applications meet all of the four tests under s. 45(1) of the Act. The tests are whether the variances:

- maintain the general intent and purpose of the Official Plan;
- maintain the general intent and purpose of the Zoning By-laws;

- are desirable for the appropriate development or use of the land; and
- are minor.

## **EVIDENCE**

Mr. Palumbo, a registered planner in Ontario was qualified to give expert opinion evidence on behalf of the applicant. In his opinion the application, as revised in accordance with City staff recommendations, conforms with the PPS and the Growth Plan as it is a more efficient use of the land and conforms with the official plan.

In his opinion, the application also meets the four tests of the Planning Act for the following reasons:

(1) It meets the general intent of the Official Plan because it respects and reinforces the physical character of the neighbourhood, as it provides for a dwelling in a residential neighbourhood designated for residential use. The Official Plan does not require the neighbourhood to be static. And the neighbourhood is eclectic and has a gradually evolving character of old and new buildings into which the proposed dwelling will fit. He noted that the size of the dwelling fits within the range of approvals in the area, and that the existing size is already over that permitted. In his opinion the perception will not be of a bigger building as there is no height variance, the building type of a large detached dwelling is common and it respects the existing building footprint.

(2) The application meets the general intent of the zoning bylaw which is to prevent shadow and overlook. It is consistent with large houses in the area but will not set a precedent as it is within the range of variances as to size. Most of the additional space is to replace empty space above the slanted roof over an integral garage. There is no variance as to height and the proposed dwelling will be almost two metres lower than the current height. The side yard variance will provide sufficient space as the setback will not change at grade and is only 10 centimetres less than permitted a- of-right, at the second story. In his opinion there are no shadow or overlook issues.

(3) The development is appropriate as it is a modest intensification and a reinvestment of housing stock that is efficient and compatible.

(4) The variances are minor as they have a minimal and not unreasonable impact on adjacent properties and do not increase shadows significantly, as the shadow studio shows, on property that is already well shaded. There is no significant impact on privacy or overlook.

I also heard from three participants, Ms. Gossage, Ms. Williams and Mr. Carter as well as Mr. Avanessy, the appellant. The participants lived close by; Ms. Gossage at 31 Bocastle Ave., approximately one block away the proposed dwelling; Ms. Williams, at 40 Teddington Park Ave., immediately to the east of the site; and Mr. Carter at 28 Teddington Park Ave. All were opposed to the application. Mr. Avanessy, the appellant, lives on the west side of the proposed dwelling.

All of the opponents have lived in the community for many years and obviously care deeply about their neighbourhood and value its character. There was a concern among them about a lack of community consultation on the part of the owner. Their opposition at this hearing is evidence that discussing and reviewing proposed changes with neighbours is a beneficial aspect of the planning process. However, it is not one of the four tests and is not a prerequisite for an approval.

Their concerns, as stated, are that the proposed dwelling will be modern, too large, too high and boxy in shape. In their opinion, they walk the streets, have a sense of the character of the neighbourhood and the proposed dwelling does not 'fit' in their neighbourhood. They want to keep the traditional architecture on this block of Teddington Park., which is unique with its boulevard and quiet ambiance close to Yonge St. It was pointed out that seniors walk the street and enjoy its current ambiance.

With respect to impact, there is a particular concern that there will be increased shadows, the overlook of a high building, and a lack of privacy. The new dwelling will be too big for the lot given its size, closeness to the street and side yard setbacks.

## **ANALYSIS, FINDINGS, REASONS**

In my opinion the appeal should be dismissed. While I understand that the appellant and participant want their neighbourhood to stay the same, the relevant documents, particularly the Official Plan, do not freeze development in the neighbourhood. The Planning Act enables TLAB to grant variances if the four tests are met. In this case the four tests have been met and I have not heard a planning rationale sufficient to refuse these variances ~~which meet the four tests~~. Moreover, there has been no challenge on the basis of the PPS or the Growth Plan or other planning policies.

I accept the evidence of the planner in this case. That evidence is outlined above and set out in Mr. Polumbo's witness statement. My reasons for accepting his evidence are as follows and are divided into three categories:

- (a) Is the building too big - the GFA, FSI variances?
- (b) Is the dwelling too close to the west lot line.- the side yard variance.
- (c) Does the proposed building fit in the existing neighbourhood?

With respect to size, in my view this issue arises primarily from raising the slanted roof above the garage and squaring it off, as there is no change in the footprint of the building. The increase in size, therefore, in my opinion, does not result in an unacceptable alteration to the size of the current building. The additional floor space is, to a significant extent, within the existing empty space above the garage. In addition while the residents' opinions are understandable, there are already modern box like dwellings in the neighbourhood, as the photo of 28 Teddington Park Ave (Ex.3) demonstrates. Moreover there are no variances sought for height, depth or setbacks other than a variance to permit an existing setback at grade and a second story setback which is 10 cm less than permitted on the second story. The information provided demonstrates that the size variances fit within the parameters of variances granted and existing buildings.

Finally I note that it was not demonstrated that the size produces an unreasonable shadow, overlook or privacy issue. I note, as well, that the size variances were recommended by City staff.

With respect to the west side yard setback, I note again that it is only 10 cm at the second story and will remain the same at grade. Thus will not be noticeable, and there are no other set back variances. There are no additional windows that will cause overlook. That is uncommon in an urban area and thus privacy is not an issue. The evidence demonstrates no significant shadow impact on shaded properties, and a porch which is covered by a roof. Moreover, the windows at 40 Teddington to the east, will not be significantly affected as the footprint of the dwelling will not change.

In my opinion the concerns related to whether the proposed dwelling will fit within the character of the neighbourhood, are, in essence, related to architecture and design. As set out above, I do not find size and setback to be of concern. I agree with the opponents that the architecture will not be similar to traditional architecture in the neighbourhood. However, in my opinion, the design is not so out of keeping as to be prohibited. There are examples of modern buildings and, indeed, traditional buildings that have a modern appearance since they were recently constructed. This is a neighbourhood where new buildings of different designs are being constructed. The photographic survey presented by Mr. Palumbo demonstrates an eclectic design mix of architecture. The neighbourhood has not been designated a heritage conservation area to preserve the facades and character of the buildings first constructed in the area. I am not prepared to say that the alterations to the existing Tudor style dwelling, which, in fact, seems rare in the area, cannot be altered to a flat roof building. I note as well, that the local residents association has not appeared in opposition to the application.

## **DECISION AND ORDER**

The appeal is dismissed and the decision of the Committee of Adjustment, dated March 1, 2018, in this matter is affirmed. The variances in that decision are approved, subject to the conditions and plans set out therein.

**X** 

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S. Makuch

Panel Chair, Toronto Local Appeal